

P O R T E R | S C O T T

A PROFESSIONAL CORPORATION

John R. Whitefleet, SBN 213301

jwhitefleet@porterscott.com

2180 Harvard Street, Suite 500

Sacramento, California 95815

TEL: 916.929.1481

FAX: 916.927.3706

Attorneys for Defendants COUNTY OF SACRAMENTO and ANNE MARIE SCHUBERT
Exempt from Filing Fees Pursuant to Government Code § 6103

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF CALIFORNIA

ARNOLD ABRERA,

CASE NO. 2:22-cv-01162-DAD-DB

Plaintiff,

**DEFENDANTS COUNTY OF SACRAMENTO
AND ANNE MARIE SCHUBERT'S NOTICE
OF MOTION TO DISMISS PLAINTIFF'S
THIRD AMENDED COMPLAINT**

v.

GAVIN NEWSOM, in his official capacity
as Governor of the State of California; et al.,

Date: June 16, 2025

Time: 1:30 p.m.

Courtroom: 4

Defendants.

Complaint Filed: 7/5/2022

First Amended Complaint filed: 9/2/2022

Second Amended Complaint filed: 2/13/2024

PLEASE TAKE NOTICE that on June 16, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 4 of the United States District Court, Eastern District of California, located at 501 I Street, Sacramento, CA 95814, Defendants COUNTY OF SACRAMENTO and ANNE MARIE SCHUBERT will move to dismiss Plaintiff ARNOLD ABRERA's Third Amended Complaint, pursuant to Federal Rules of Civil Procedure ("F.R.Civ.P.") 12(b)(1) and(6), and 12(f) on the following grounds:

1. The fifth "cause of action" asserts the prosecution of Plaintiff violated the Second Amendment for which prosecutorial immunity applies to the District Attorney.
2. Eleventh Amendment Immunity applies to bar damages against the District Attorney as to all claims.

3. Declaratory Relief against the District Attorney is not appropriate under the Ex Parte Young Doctrine Exception to Eleventh Amendment Immunity.

4. Plaintiff cannot obtain an injunction to prevent enforcement of criminal statutes.

5. Plaintiff fails to sufficiently allege standing for injunctive relief.

6. The Fifth and Six Claims against the County fails to state Monell claims.

7. Seventh Claim for State Law inverse condemnation fails as a matter of law.

8. Where Plaintiff seeks return of the rifles, the Federal Court must decline jurisdiction Under *Penn General*.

9. *Rooker/Feldman* abstention applies to any claim for the return of the rifles.

10. Collateral estoppel/issue preclusion applies to any claim for the return of the rifles.

11. Plaintiff's claim for the return of the rifles is unripe.

Pursuant to the Court's Order re Filing Requirements (ECF No. 11-2), the parties have met and conferred regarding the content of the Third Amended Complaint (and its prior iteration) and any potential resolution prior to the filing of this motion, but could not reach a resolution. Specifically, counsel for moving Defendants transmitted lengthy correspondence which included points and authorities and argument, to which counsel for Plaintiff responded in a lengthy letter which also included points and authorities and argument. Much of this discussion was covered in meet and confer in connection prior to filing of the motion to dismiss the First Amended Complaint, as well as meet and confer prior to filing of the motion to dismiss the Second Amended Complaint. No agreement was reached, necessitating this motion.

This Motion to Dismiss is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities in support thereof, the entire Court file and any other pleadings, evidence, or legal arguments that may be presented at the time of the hearing to the extent one is held.

///

///

///

///

///

Dated: April 29, 2025

Respectfully submitted,

PORTER SCOTT
A PROFESSIONAL CORPORATION

By /s/John R. Whitefleet
John R. Whitefleet
Attorney for Defendants COUNTY OF
SACRAMENTO and ANNE MARIE
SCHUBERT